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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review -- Review of	)	
the Commission's Broadcast Ownership Rules	)	MM Docket No. 98-35
and Other Rules Adopted Pursuant to Section	)	
202 of the Telecommunications Act of 1996	)	

COMMENTS OF

CENTER FOR MEDIA EDUCATION
CHINESE FOR AFFIRMATIVE ACTION
THE CIVIL RIGHTS FORUM
FEMINIST MAJORITY FOUNDATION
LEAGUE OF UNITED LATIN AMERICAN CITIZENS
MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL
NOW LEGAL DEFENSE AND EDUCATION FUND
PHILADELPHIA LESBIAN AND GAY TASK FORCE
RAINBOW/PUSH COALITION
WOMEN'S INSTITUTE FOR FREEDOM OF THE PRESS

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SUMMARY

In light of the unprecedented concentration of broadcast media ownership that has taken place since the passage of the Telecommunications Act of 1996, Commenters Center for Media Education, et al. maintain that the Commission should retain or strengthen its existing ownership limits to ensure that the public has access to diverse sources of information and that women and minorities have opportunities to own broadcast media.

Because the ownership of a media entity direct influences its programming choices, the Commission must promote diverse ownership to ensure that varied viewpoints are presented. New technologies such as DBS and the Internet are not yet competitive sources of local news and programming, so their development does not justify the repeal or modification of broadcast ownership rules.

Commenters specifically argue that the Commission's implementation of the 1996 Act has hindered competition and diversity in the national television market and local radio market. Further relaxation of the ownership rules would only exacerbate this situation. Thus, to preserve and promote competition and diversity in the national market, the Commission should retain and seek to strengthen the national television ownership rules and repeal the UHF discount. Similarly, to address the recent consolidation in the local radio market and the resulting reduction in news and public affairs programming, the Commission should retain and seek to strengthen the local radio ownership rules. Finally, to preserve a competitive market and promote opportunities for diverse sources of news and public affairs programming, the Commission should continue to prohibit newspaper/broadcast and cable/television cross-ownership.

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CENTER FOR MEDIA EDUCATION; CHINESE FOR AFFIRMATIVE ACTION; THE CIVIL RIGHTS FORUM; FEMINIST MAJORITY FOUNDATION; LEAGUE OF UNITED LATIN AMERICAN CITIZENS; MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL; NOW LEGAL DEFENSE AND EDUCATION FUND; PHILADELPHIA LESBIAN AND GAY TASK FORCE; RAINBOW/PUSH COALITION; WOMEN'S INSTITUTE FOR FREEDOM OF THE PRESS

Commenters Center for Media Education, et al. ("CME, et al." or "Commenters") hereby submit the following comments in response to the Federal Communications Commission's Notice of Inquiry, FCC 98-37, released March 13, 1998 ("Notice"). In these comments, CME, et al. argue generally that the Commission should retain or strengthen its existing ownership limits to ensure that the public has access to diverse sources of information and that women and minorities have opportunities to own broadcast media. CME, et al. then discuss more specifically several of the Commission's proposals in the Notice. CME, et. al. argue that to promote competition and diversity in the national market, the Commission should retain or strengthen its rules concerning national television ownership and repeal the UHF discount. Next, Commenters urge the Commission to address the trend of industry consolidation by retaining or strengthening the local radio ownership rules. Finally, Commenters argue that to preserve a diverse and competitive market, the Commission should maintain the newspaper/broadcast and cable/television cross-ownership rules.

I. The Commission Should Retain or Strengthen Existing Ownership Limits to Ensure That the Public Has Access to Diverse Sources of Information

The Commission's enforcement of its ownership limits preserves the public's access to diverse sources of information. In these Comments, CME, et al. use the term "diversity of sources," to express the long-standing goal of keeping editorial control and decision-making in the hands of multiple owners. Editorial control over local and national news and information must be kept in varied hands through ownership limits, or the public runs the risk of receiving one-sided news coverage or no presentation of local news topics which the owner perceives as not worthy of coverage. Diversity of ownership increases the likelihood that broadcasters will cover controversial issues and critique each other's editorial and local news coverage choices.

The Supreme Court, the Commission and Congress have all recognized the importance of maintaining a diversity of ownership sources. Just last year, the Supreme Court described ensuring public access to a multiplicity of information sources as a governmental purpose of the "highest order."[1] The Court reiterated the bedrock principle that the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[2] Indeed, the Court has found that

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[1]Turner Broadcasting System, Inc. v. FCC, 117 S. Ct. 1174, 1186 (1997), quoting Turner Broadcasting System, Inc. v. FCC, 512 U.S. 662, 663 (1994) (upholding the Commission's cable must-carry rules).

[2]Associated Press v. United States, 326 U.S. 1, 20 (1945). See also, Turner Broadcasting System, Inc. v. FCC, 117 S. Ct. 1174, 1187-1188 (1997) (reaffirming this central tenet of Associated Press).

promotion of diversity of viewpoint qualifies, "at the very least," as an "important governmental objective,"[3] and has upheld the Commission's finding that "diversification of ownership would enhance the possibility of achieving greater diversity of viewpoints."[4]

The Commission has also demonstrated a commitment to diversity for more than half a century.[5] As discussed in the Notice, the goal of promoting diversity, including diversity of sources and viewpoints, has guided the Commission's broadcast ownership regulations from their inception. Similarly, even while relaxing ownership policies in the Telecommunications Act of 1996 ("the 1996 Act"), Congress recognized the importance of promoting a "diversity of media voices."[6]

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[3]Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 567 (1994). This portion of Metro was *not* overturned in Adarand Constructors v. Pena, 515 U.S. 200 (1995). Adarand overturned only the part of Metro which held that race-based preferences were subject to intermediate scrutiny. 515 U.S. at 227.

[4]FCC v. National Citizens Committee for Broadcasting et al., 436 U.S. 775, 796 (1978) (upholding newspaper/broadcast cross-ownership rule requiring divestiture in certain circumstances). The recent D.C. Circuit three-judge panel ruling in Lutheran Church-Missouri Synod v. FCC, 141 F.3d 344 (D.C. Cir. 1998), rehearing sought May 29, 1998, does not undermine the Supreme Court's holding that diversity is an important interest. In Lutheran Church, the D.C. Circuit focused on the Commission's reliance on diversity as a justification for its EEO requirements. The court opined that promoting intra-station diversity is not a compelling interest, but explicitly recognized that intra-station diversity has "less force than the 'important' interest [of inter-station diversity] at stake in Metro Broadcasting." 141 F.3d at 355. In any event, inter-station diversity of ownership, at issue here, was not before the court in Lutheran Church.

[5]Notice at ¶ 4.

[6]47 U.S.C. § 257(b).

A. The ownership of a broadcast entity directly influences the entity's programming choices

The ownership of a broadcast entity determines the viewpoint presented by that entity. Indeed, the Supreme Court recently acknowledged this point in Arkansas Educational Television Commission v. Forbes, 118 S. Ct. 1633, 1639 (1998), when it stated that, "[a] broadcaster by its nature will facilitate the expression of some viewpoints instead of others." The Court also noted that "public and private broadcasters alike are not only permitted, but indeed required, to exercise substantial editorial discretion in the selection and presentation of their programming."[7] These statements discredit the contention of some commenters in prior proceedings who have argued that owners will always program their stations to fill the most profitable programming niche, regardless of their personal interests or beliefs.[8]

The station owner's influence on programming content has been clearly demonstrated on many occasions. For example, Donald Wildmon founded American Family Radio, a network of 156 stations serving 27 states,[9] to "use these radio stations to inform Christians about what is happening in America."[10] Specifically, Wildmon was acting out of his desire to advance "traditional family values, focusing primarily on the influence of television and other media --

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[7] Arkansas Educational Television Commission v. Forbes, 118 S. Ct. 1633, 1639 (1998).

[8] See, e.g., CBS, Inc., Comments, Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules, MM Docket No. 91-221, MM Docket No. 87-7 (Feb. 7, 1997) at 19.

[9] A God given vision Comes to Life.... <http://afr.net/afr_rad.htm> (Mar. 30, 1998).

[10] Id.

including pornography -- on our society."[11] Similarly, Rupert Murdoch's establishment of the Fox News cable channel provides another example of an owner's control over the editorial viewpoint of his media entities. Murdoch launched his news service to "be a counterpoint to Turner's [founder of rival Cable News Network] 'liberalism;'"[12] he hired Roger Ailes, a former political consultant to Presidents Bush and Nixon, and producer of the conservative "The Rush Limbaugh Show,"[13] to run the station to ensure that it would present a conservative voice. Because media owners shape the editorial viewpoint of their broadcast entities according to their own views, diversifying ownership is critical to diversifying the viewpoints available on broadcast stations.

A media outlet's ownership will also often determine the news stories that are presented on its stations. In some cases, media owners' selection of stories takes into consideration the impact of their choices on all of their holdings.[14] For example, Murdoch has muted the political voices attempting to be heard via some of his outlets when they threatened the general financial welfare of the News Corp. conglomerate. Specifically, on a few occasions, Murdoch altered his

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[11] American Family Association, Inc.: Who is AFA?, <http://www. afa.net/afa_bro.htm> (Mar. 30, 1998).

[12] Daniel Jeffreys, Stateside, The Independent (London), Feb. 13, 1996, at 17.

[13] Marvin Kitman, The Marvin Kitman Show/ Murdoch Finally May Get His News, Newsday, Feb. 5, 1996, at B21.

[14] Sometimes a network will integrate its programming with public affairs initiatives that are consistent with its offerings. For example, the Lifetime Television network, which provides programming directed to a female audience, has launched initiatives on breast cancer awareness and childcare. See, e.g., Lifetime Television, The Congressional Caucus for Women's Issues and Advocacy Groups Announce New Effort to Make Women's Voices Heard in the National Conversation on Child Care, at <www.lifetimetv.com> (Mar. 31, 1998).

media entities' coverage of China to avoid consequences that would affect News Corp.'s bottom line. In 1994, the Chinese government threatened Murdoch with exclusion from its booming market if he did not remove the BBC's news channel from Star TV, a direct broadcasting satellite service based in Hong Kong. Murdoch capitulated to the government's demands and removed the channel.[15] Murdoch recently acquiesced again to China's financial and political pressure when he forced his publishing house HarperCollins to drop plans to publish a book by Chris Patten, the last British governor of Hong Kong, that Murdoch felt took too negative a view of China.[16] Although this decision by Murdoch was covered widely by most British newspapers, it was ignored by two, The Times and The Sun, which are both owned by News Corp.[17] These recent actions by Murdoch reveal the clear connection between ownership and content. They also demonstrate the fallacy of the argument that a broadcast entity is economically motivated only to give the viewing public exactly what it desires. At times, those consumer-driven interests will be dwarfed by the larger economic interests of the huge diversified conglomerates that own many broadcast stations today.

Murdoch's News Corp. is not the only conglomerate that uses its control of the airwaves to protect its diverse concerns. For example, NBC News has a long history of self-censoring its

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[15]Ken Silverstein, His Biggest Takeover --How Murdoch Bought Washington, The Nation, June 8, 1998 at 29.

[16]Warren Hoge, Murdoch Halts a Book Critical of China, NY Times, Feb. 28, 1998, at A5.

[17]Id. Murdoch also used his newspaper, The New York Post, to express his anger at long-time rival Time Warner Vice Chairman, Ted Turner when Time Warner denied the Fox News Channel access to its New York City cable system. The Post's page-one headline read, "Is Ted Turner Nuts? You Decide." Frank Rose, There's No Business Like Show Business, Fortune, June 22, 1998.

news coverage to avoid harming the interests of its parent corporation General Electric.[18] For example, in 1987, Jack Welch, head of General Electric, instructed Larry Grossman, then head of NBC News, "not to use phrases like 'Black Monday' to describe the 1987 stock market crash, because it was depressing the price of blue chip stocks like GE."[19] More recently, NBC's Today show ran a segment on corporate boycotts that ignored the one targeting General Electric, despite the fact that it is "the premier U.S. boycott."[20]

Of course, direct censorship is not the only threat to the free flow of ideas on a broadcast station. The unspoken fear of upsetting the parent corporation is often more than enough to chill investigations, and kill potential stories. As more independent stations are swallowed up by these expanding ownership groups, American consumers become increasingly less likely to find a source of news and public affairs stories which has not been filtered for corporate approval.

In addition, cross-ownership of various media entities often leads to biased coverage. For example, in an attempt to increase ratings for The Simpsons, which is aired on News Corp.'s Fox network, News Corp.'s TV Guide devoted almost an entire issue to the program."[21] Similarly, on ABC/Disney program Good Morning America, a movie review of News Corp.'s Anastasia emphasized that the movie did not compare to the animation movies created by Disney.[22]

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[18]Jim Naureckas, Corporate Ownership Matters: The Case of NBC, EXTRA! (November/ December 1995), at <http://www.fair.org/extra/9511/nbc.html> (Apr. 24, 1998).

[19]Id.

[20]Jeff Cohen, Stories TV Doesn't Tell, The Nation, June 8, 1998, at 7.

[21]David Owen, Crazy for the Simpsons, TV Guide, Jan. 3-9, 1998.

[22]Joel Siegel, Charles Gibson, Joel's Review, ABC Good Morning America, Nov. 28, 1997.

Examples like these make clear the connection between ownership of a broadcast entity and the editorial content placed on that station, and demonstrate the need for a diversity in ownership to ensure a diversity of viewpoints in the broadcast media. As the Supreme Court stated unequivocally in Red Lion, it "is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee."[23] As large broadcast ownership groups monopolize the available viewpoint outlets, the public may lose the viewpoint diversity necessary to have a vibrant marketplace of ideas and a durable democracy, as: "'[s]peech concerning public affairs is more than self-expression; it is the essence of self-government.'"[24]

B. New technologies such as DBS and the Internet are not competitive sources of local news and programming and therefore do not justify the repeal or modification of ownership rules.

New technologies such as Direct Broadcast Satellite (DBS) and the Internet do not justify the repeal of ownership rules because these media are unaffordable for many households and, in any event, do not generally provide original news or informational programming on local issues.[25] The Commission's Fourth Annual Report on the Status of Competition in Markets for the Delivery of Video Programming reveals that new technologies have not penetrated U.S.

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[23]Red Lion v. United States, 395 U.S. 367, 390 (1969), citing Associated Press v. United States, 326 U.S. 1, 20 (1945); Abrams v. United States, 250 U.S. 254, 270 (1964)(Holmes, J. dissenting).

[24]Id., citing Garrison v. Louisiana, 379 U.S. 64. 74-75 (1964).

[25]For further discussion of new media's lack of local news and public affairs programming, see Black Citizens for a Fair Media, et al., Reply Comments, Newspaper/Radio Cross-Ownership Waiver Policy, MM Docket No. 96-197 (Mar. 21, 1997).

households to any degree comparable to the penetration of broadcast radio and television. More than one third of the 97 million television households do not receive cable television, the most far-reaching of these new technologies.[26] DBS services reach only 5.1 million subscribers and cannot be received by some households due to physical obstacles.[27] Only 23% of U.S. households have access to the Internet and other online services.[28] These media have not enjoyed further penetration because they remain unaffordable for much of the public. Fees for DBS and cable average over $25 per month, in addition to installation fees which average up to $175 and equipment fees which average up to $200.[29] Internet access averages about $20 in fees per month in addition to telephone line connection fees and computer equipment costs of thousands of dollars.[30] As a result, most Web users are well-educated individuals who earn more than twice the salary of the average American citizen.[31]

In addition to being unaffordable for much of the public, new technologies generally do not provide original local news coverage. For example, the Newspaper Association of America

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[26]See Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Fourth Annual Report, FCC 97-423 (1998) at 7, 16 ("Fourth Annual Report") (statistics from June 1997).

[27]Id. at 8, 37.

[28]Thomas E. Weber, Who, What, Where: Putting the Internet in Perspective, Wall St. J., Apr. 16, 1998, at B12.

[29]Fourth Annual Report, FCC 97-423 at B-16, Table B-10.

[30]Walter S. Mossberg, Personal Technology, Yahoo! Challenges AOL as a Portal to World Wide Web, Wall St. J., Mar. 19, 1998, at B1.

[31]Thomas E. Weber, Who, What, Where: Putting the Internet in Perspective, Wall St. J., Apr. 16, 1998, at B12.

("NAA") cites the VCR as a new video technology which is competing with broadcast stations.[32] However, VCRs do not provide original local news programming and therefore do not foster diversity of sources for local news and informational programming. Similarly, DBS services do not provide local news. Indeed, they are prohibited from offering local television signals.[33] Even if DBS could offer local signals, it would not contribute a new source of information to the market because it would simply be rebroadcasting programming already available on local stations. The Internet also contributes little to the diversity of local news outlets because many of the websites which provide news are owned by parent newspapers or television networks, and thus do not add an additional source of news and information to the market. These sites simply repackage the stories presented in newspapers and on television.[34] Because these new technologies are not diverse sources of local news, their development does not justify the repeal of ownership limits.

II. Ownership Limits Are Needed to Ensure That Minorities and Women Have the Opportunity to Own Media Outlets

The Commission should maintain strict ownership limits to ensure that minorities and women are not completely squeezed out of broadcast ownership. Ensuring diversity of ownership will increase opportunities for minorities and women to purchase media outlets.

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[32]Newspaper Association of America, Petition for Rulemaking (Apr. 28, 1997) at 25.

[33]See Satellite Home Viewer Act of 1988, 17 U.S.C. § 119.

[34]See Laurence Zuckerman, Don't Stop the Presses: Newspapers Balk at Scooping Themselves, <www.nytimes.com> (Jan. 6, 1997). Furthermore, they do not provide news and information more rapidly than their parent sources because in many circumstances, the parent newspapers and networks refuse to publish breaking news on their websites until the information has already been reported in the newspaper or on the television newscast. Id.

The relaxation of the ownership rules in the 1996 Act and the resulting increased consolidation of broadcast ownership has diminished the number of ownership opportunities for minorities and women. The top twenty-five television groups now control 36% of the commercial television stations in the U.S., an increase of 11% since 1996.[35] The number of total television owners fell by 21% in 1996.[36] This consolidation of broadcast ownership has led to an increase in station prices.[37] Group owners' greater resources and access to capital has allowed them to acquire additional stations, thereby eliminating opportunities for minorities and women.

Minorities and women have an especially difficult time purchasing broadcast stations because they often face discrimination in obtaining capital. Studies have shown that "white entrepreneurs are more likely to receive capital from banks than their minority counterparts despite the same qualifying background and profile."[38] Indeed, since the passage of the 1996

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[35]See Sara Brown, The Big Get Bigger, Broadcasting & Cable, Apr. 6, 1998, at 8 (the deregulation of the 1996 Act is "chiefly responsible" for the increase in consolidation). In 1996, the top 25 groups owned 290 of 1,181 commercial television stations; today they own 432 of 1,202 commercial television stations. Id.

[36]See Fourth Annual Report, FCC 97-423 at 58 (total number of television station owners was 600 in 1995 and fell to 475 in 1996).

[37]See, e.g., Peter Kaplan, Wave of Mega Mergers Signals Changes Across Radio Dial: Critics Fear less Diversity, More Expensive Ads; New Giants Emphasize Efficiency, Experimentation, Wash. Times, Aug. 4, 1997, at D12 (price of radio station has increased 20% in two years). See also, Jon Lafayette, Allbritton, ABC Deal May Be Near, Eight Stations At Stake, Electronic Media, June 22, 1998.

[38]See The Minority Telecommunications Development Program, National Telecommunications and Information Administration, U.S. Dept. of Commerce, Capital Formation and Investment in Minority Enterprises in the Telecommunications Industries, Executive Summary (1995) at <http://www.ntia.doc.gov/opadhome/mtdpweb/finover.htm> (July 13, 1998).

Act, ownership by minorities and women has fallen to an alarming level.[39] Between 1995 and 1997, minority ownership of commercial television and radio stations decreased by 28 stations (from 350 stations to only 322), while the total number of stations in the industry increased by 63 stations (from 11,412 stations to 11, 475).[40] Thus, minorities owned a mere 2.8% of commercial broadcast stations in 1997.[41] Similarly, women owned fewer than 20 total radio stations in the Spring of 1997.[42] Any relaxation of the Commission's current broadcast ownership rules would further hurt minorities' and women's ability to purchase stations.

By increasing ownership opportunity generally, the ownership rules provide a race and gender neutral means of fostering ownership by minorities and women. In light of the Supreme Court cases Adarand v. Pena[43] and United States v. Virginia,[44] and the recent Lutheran Church-

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[39]For a detailed discussion of the barriers faced by minorities and women, see United Church of Christ, Office of Communication, et al., Reply Comments, Implementation of Section 309(j) of the Communications Act - Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234 (Feb. 17, 1998) (documenting need for and constitutionality of broadcast auction incentives for minorities, women, small businesses, and entities without other media interests) ("Competitive Bidding Reply Comments").

[40]See The Minority Telecommunications Development Program, National Telecommunications and Information Administration, U.S. Dept. of Commerce, Minority Commercial Broadcast Ownership in the United States, (1997) ("NTIA Report") at 3.

[41]Id.

[42]Competitive Bidding Reply Comments, supra n.38, at 13.

[43]515 U.S. 200 (1995) (outlining strict scrutiny standard for race-based governmental classifications).

[44]116 S. Ct. 2264 (1996) (outlining intermediate scrutiny standard for gender-based governmental classifications).

Missouri Synod v. FCC[45] decision in the D.C. Circuit, challenges to race and gender based programs are likely to be made; and although Commenters believe that such programs would be ultimately upheld,[46] it takes significant resources to defend such challenges. At a time when race and gender based programs are particularly vulnerable, the Commission should not eliminate neutral rules which preserve opportunities for minorities and women to own media outlets.

The need for minority and female owners is even more important after Lutheran Church because broadcast stations may no longer be required to engage in outreach to minority or female job applicants.[47] If stations fail to undertake such outreach efforts, they are less likely to hire minority and female employees, thus increasing the likelihood that stations will fail to serve their entire communities. The Commission should maintain ownership limits to ensure that minorities and women have the opportunity to own media outlets and contribute to the diversity of sources available to the public.

III. The Commission Should Retain and Seek to Strengthen the National Television Ownership Rules and Repeal the UHF Discount

The national ownership rules provide important checks on anti-competitive behavior in the television broadcast industry.[48] If further consolidation is allowed, the Commission's efforts

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[45]141 F.3d 344 (D.C. Cir. 1998), rehearing sought May 29, 1998 (finding the Commission's EEO regulations for radio stations an unconstitutional violation of equal protection).

[46]For a discussion of why race and gender based incentives in broadcast auctions are constitutional and in the public interest, see Competitive Bidding Reply Comments, supra n.38.

[47]Of course, in striking down the Commission's EEO policy, Lutheran Church does *not* indicate that ownership preferences for minorities and women are invalid.

[48]The duopoly, attribution and one-to-a-market rules also provide important limits on anti-competitive behavior by television stations. For a further discussion of the importance of

at fostering diversity will be frustrated. To address the increased industry consolidation, and its negative consequences for the public interest, the Commission should retain and seek to strengthen the current national television ownership rules and repeal the UHF discount.

A. The FCC's implementation of the 1996 Act and retention of the UHF discount has hindered competition in the national market

The 1996 Act has resulted in an unprecedented level of concentration for the broadcast television industry within an extremely short period of time. In the two years since the 1996 Act raised the national ownership limit from 25% to 35%, a number of television ownership groups have expanded their national television household coverage so that it is close to the current limit. For example, Fox Television Stations Inc. has increased its percentage of TV household coverage by almost 13% within the last two years, to a total reach of 34.9%, just .1% under the new limit.[49] Similarly, Paxson Communications Corp. has purchased 44 new television stations, increasing its coverage from 13.9% to 30.9%.[50] Moreover, without the UHF discount, both of these broadcasters well exceed the 35% cap.[51] Extending the national ownership limit will likely

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maintaining these rules, see Media Access Project et al., Comments and Reply Comments, Review of the Commission's Regulations Governing Television Broadcasting, et al., MM Docket No. 91-221, MM Docket No. 96-222, MM Docket No. 87-7, MM Docket No. 87-8, MM Docket No. 94-150, MM Docket No. 92-51, MM Docket No. 87-154 (Feb. 7, 1997 and Mar. 21, 1997). See also, Black Citizens for a Fair Media, et al.,Comments and Reply Comments, Review of the Commission's Regulations Governing Television Broadcasting, et al., MM Docket No. 91-221, MM Docket No. 87-7 (Feb. 7, 1997 and Mar. 21, 1997).

[49]Television's Revamped Leadership, Special Report Top 25 TV Groups, Broadcasting & Cable, Apr. 6, 1998, at 46-50.

[50]Id.

[51]Id.

produce another rush to whatever new ownership limit the Commission may establish, thereby further diminishing competition.

This consolidation may have an adverse effect on the market for programming because of the shrinking number of network affiliate owners. While in 1994, there were 290 network affiliate owners, today, even with the addition of WB, UPN and PaxNet, there are only 258.[52] Moreover, the Big Four affiliates all are owned by 189 groups.[53] In addition, the networks are increasing the number of stations they own, with the Big Four owning 25% more stations in 1997 than in 1996.[54] Because the groups which own networks are increasingly programming their stations with content produced by their own vertically-integrated studios,[55] any further relaxation of the ownership limitations may enable these ownership groups to exercise monopsony power over unintegrated content producers.[56] As consolidation increases, and as barriers to entry increase due to increased television station prices,[57] the probability of "coordinated,

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[52]Sara Brown, Hearst-Argyle Picks Up Pulitzer, Broadcasting & Cable, June 1, 1998, at 12.

[53]Id.

[54]Notice at Appendix A.

[55]See, e.g., Stern to Attach Fox Syndie Arm to Station Duty, Hollywood Reporter, June 3, 1998. ("Integrating content and distribution assets is a top priority at Fox Television in these heady days of vertical integration."); see also, Frank Rose, There's No Business Like Show Business, Fortune, June 22, 1998.

[56]See Thomas G. Krattenmaker and Stephen Salop, Anticompetitive Exclusion: Raising Rivals Costs to Achieve Power over Price, 96 Yale L.J. 209, 241 (1986).

[57]James P. Miller, Meredith Bolsters Broadcast Operation, Agreeing to Buy 4 First Media Stations, Wall St. J., Jan. 27, 1997, at B10.

monopolistic behavior" increases.[58] To address this anti-competitive threat, the Commission should at the very least retain the current national television ownership rules.

B. Relaxing or eliminating the national television ownership rules would be inconsistent with the Commission's goal of promoting diversity

In addition to frustrating competition, the 1996 Act's amendment of the national television ownership rules has had an adverse impact on the amount of diversity in television. Any further relaxation of the rules would only exacerbate this problem. While the 1996 Act has allowed the television industry to benefit from economies of scale, these benefits have not reached the public. Instead, the public is simply receiving less news and information programming from fewer sources. Common ownership reduces the number of different sources of programming while providing a financial benefit only to the station owners.

In some markets, common ownership of stations has led to shared newscasts. For example, in Fort Myers, Florida, an NBC and ABC affiliate are operated by the same party, and air the same newscast.[59] A similar arrangement was recently established in Northeastern Pennsylvania. In that case, the owner plans to "put newsrooms of the local CBS and NBC affiliates side by side, as the two news operations share not only the building but a news director."[60]

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[58]Thomas G. Krattenmaker and Stephen Salop, Anticompetitive Exclusion: Raising Rivals Costs to Achieve Power over Price, 96 Yale L.J. 209, 241 (1986).

[59]Dan Trigoboff, CBS, NBC Affils Team for News, Broadcasting & Cable, Apr. 6, 1998, at 92. The owner of one station also operates the other station through an LMA. Id.

[60]Id.

In other markets, some stations are not airing any public affairs programming at all. In a recent five market study, the Media Access Project and the Benton Foundation found that over a two-week period, 40 commercial broadcasters provided only 46.5 hours of local public affairs programming out of 13,250 total programming hours.[61] The study reported that, of the 40 stations, 70 percent did not provide any local public affairs programming, and 25 percent did not carry any kind of local programming.[62] Clearly, the financial benefits from consolidation are going to station owners, rather than being used to produce local public affairs programming which would benefit the public.

C. To promote competition and diversity in the national market, the Commission should eliminate the UHF television discount

The UHF discount contributes to the lack of competition and diversity in the national television market, and should be repealed. Moreover, the original justification for the discount, i.e., the inadequacy of UHF reception, is no longer applicable. The difference in quality of reception between UHF and VHF stations has diminished with the combination of the must-carry rules and increased cable penetration. The cable must-carry rules set forth at 47 U.S.C. § 534, which did not exist when the UHF discount was promulgated in 1985, eliminate reception problems associated with UHF stations for many viewers.[63] The rules require cable operators to carry the signals of local television stations without charging the broadcast stations for this

[61]What's Local About Local Broadcasting? A Joint Report of the Media Access Project & Benton Foundation, April 1998 at <http://www.benton.org/Policy/TV/whatslocal.html> (Apr. 4, 1998).

[62]Id.

[63]The Supreme Court upheld the cable must-carry rules in Turner Broadcasting System, Inc. v. FCC, 117 S. Ct. 1174 (1997).

carriage.[64] Because UHF signals are carried on cable, the 66.2% of television households which subscribe to cable receive local UHF stations with clear, uninterrupted reception.[65]

In addition to improved reception through cable, UHF stations have become more appealing to audiences and advertisers because of the stations' increased network affiliations. The creation of new broadcast networks has meant that more UHF stations have been able to offer network-affiliated programming which is often unavailable on VHF stations.[66] Audiences and advertisers are thus relying increasingly on UHF stations to serve their programming needs.

The UHF discount currently provides an unfair competitive advantage by allowing UHF owners to evade national ownership reach caps. While VHF owners must comply with a national ownership reach cap of 35%, the UHF discount allows UHF owners to circumvent the rules and reach much larger segments of the audience. Indeed, of the top five television owners, three are using the UHF loophole to reach over 35% of the national television audience. Paxson Communications Corp. ("Paxson") reaches an overwhelming 61.4% of the national audience, but claims only a 30.9% reach with the UHF discount. In fact, Paxson is using the UHF discount and

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[64] 47 U.S.C. § 534. The rule requires operators of cable systems with more than 12 activated channels to carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels. Smaller cable systems can carry fewer local signals. See id.

[65] Although cable carriage rules do not improve reception for non-subscribers, they improve reception for a large segment of the viewing audience, making the 50% discount arbitrary and unjustified.

[66] See Brian Lowry, Hits on Cable, New Networks Prove Viewers Will Range Afield for Shows, St. Louis Post-Dispatch, May 1, 1998, at E10.

must-carry rules to create a national network on a city by city basis.[67] Paxson plans to accumulate enough stations to reach 70% of the national market with its network later this year.[68] Similarly, Fox Television Stations Inc. reaches 40.5% of the national audience, but the UHF discount allows it to claim only 34.9%; Tribune Broadcasting reaches 37.5% of the national audience, but claims only a 26.5% reach with the UHF discount.[69] These figures demonstrate that retaining the UHF discount will reduce the diversity of sources available to the public and potentially allow a handful of owners to control the national news agenda.

To enhance diversity and eliminate the large UHF owners' unfair competitive advantage over VHF owners, the Commission should eliminate the discount and require UHF owners to comply with the 35% ownership cap applied to all other owners. For those owners who would exceed the 35% national cap when the UHF discount is repealed, the Commission should adopt a grandfathering phase-out provision which permits them to divest excess stations over a several year period.[70] Such a plan would level the playing field and create opportunities for minorities and women to purchase broadcast stations.

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[67]John Levesque, Growing Paxson Empire Extends Its Reach into Seattle, Seattle Post-Intelligencer, Nov. 18, 1997, at D6.

[68]Peter Spiegel, Thanks, Partner (Paxson Communications Corp. Management Style), Forbes, May 19, 1997, at 146.

[69]Television's Revamped Leadership, Special Report Top 25 TV Groups, Broadcasting & Cable, Apr. 6, 1998, at 46-50.

[70]For example, the phase-out provision could require owners who exceed the 35% national reach cap to meet the cap using a 30% UHF discount by the end of year one, a 15% UHF discount by the end of year two, and finally meet the 35% national reach cap with no UHF discount by the end of year three.

IV. The Commission Should Retain and Seek to Strengthen the Local Radio Ownership Rules

As evidenced by the Commission's own report, Review of the Radio Industry, 1997, implementation of the 1996 Act unleashed a consolidation trend in the local radio industry. As a result, there has been a significant reduction in the diversity of viewpoints and the amount of news and public affairs programming. Further relaxing the rule would contribute to these problems and adversely affect competition in the local radio market.

A. Industry consolidation has reduced the diversity of voices in the local radio market

The number of radio station owners has declined 11.7 percent since March 1996 and 32 owners now hold more than 20 stations, the pre-1996 Act limit.[71] In fact, some owners, including Capstar Broadcasting Partners and Jacor Communications, now own more than 200 stations.[72] As of February 1998, four of Broadcasting & Cable's top 25 radio groups have been taken over by other large groups.[73] Broadcast Investment Analysts' 1998 State of the Radio Industry study found that the number of radio station owners had declined by 700 since the passage of the 1996 Act, and that nearly 50% of those remaining are part of a "duopoly-plus configuration."[74] The relaxation of the rules has also allowed group owners to gain control of local markets. For example, by the end of 1997, CBS Radio owned 8 of the 64 stations in Los

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[71]Review of the Radio Industry, 1997, MM Docket No. 98-35, Mar. 13, 1998, at 3.

[72]Anthony DeBarros, Amid Consolidation, Fear of Less Diversity, Choice, USA Today, July 7, 1998 at 1A.

[73]Sara Brown, Living Large in 1997, Broadcasting & Cable, Feb. 2, 1998 at 32, 33.

[74]John Merli, BIA Study Tracks Decrease of Ownership Diversity, Broadcasting & Cable, June 8, 1998, at 40.

Angeles and Chancellor Media owned 8 of 44 stations in Washington, D.C.[75] Furthermore, the Act has made new entry into the local radio industry more difficult by driving up the value of existing stations by at least 20 percent over the last two years.[76]

These market trends make it almost impossible for new entrants, especially minorities and women.[77] Indeed, the NTIA notes that most minority owners attribute the drop in ownership to changes in the local radio ownership rules.[78] The NTIA found that:

> changes in industry policies and government regulation have increased station prices, reduced ownership diversity, increased the challenges faced by minority commercial station owners in competing for advertising revenues, rescinded key incentive based programs designed to encourage minority ownership in commercial broadcasting, and ultimately increased concentration of media ownership.[79]

The drop in minority ownership is particularly severe in FM radio, where stations have clearer, more desirable signals. In 1997, the number of black-owned FM stations dropped 26%, while the number of Hispanic-owned stations decreased 9%.[80] Nationwide, there are only two FM

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[75]Anthony DeBarros, Amid Consolidation, Fear of Less Diversity, Choice, USA Today, July 7, 1998 at 1A-2A.

[76]Peter Kaplan, Wave of Mega Mergers Signals Changes Across Radio Dial: Critics Fear less Diversity, More Expensive Ads; New Giants Emphasize Efficiency, Experimentation, Wash. Times, Aug. 4, 1997, at D12.

[77]For a discussion of the low percentage of stations owned by minorities and women, see Competitive Bidding Reply Comments, supra n.38.

[78]NTIA Report, at 2. See Section II, supra, for further discussion of the role that ownership rules play in enhancing opportunities for minorities and women.

[79]Id. at Overview, at 2, citing Andrea Adelson, Minority Voice Fading for Broadcast Owners, NY Times, May 19, 1997, at D9.

[80]Anthony DeBarros, Amid Consolidation, Fear of Less Diversity, Choice, USA Today, July 7, 1998 at 1A-2A.